

(1950) 04 CAL CK 0028
In the Calcutta High Court
Case No : Criminal Ref. No. 28 of 1950

Gostha Behari Mandal

APPELLANT

Vs

Abed Ali and Others

RESPONDENT

Date of Decision : 05-04-1950

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 147, 147(2)

Citation : AIR 1950 Cal 425

Hon'ble Judges : Roxburgh, J

Bench : Single Bench

Advocate : Manmatha N. Das and Sukumar Mitter, for the Appellant; Manishi Kr. Das, for the Respondent

Judgement

Roxburgh, J.—This reference must be rejected. It is against an order passed u/s 147, Criminal P. C., the dispute being about a bank of a tank used as a burial ground, in certain cases, by Hindus of neighbouring villages. A lease was taken by one of the opposite parties before the trial Magistrate of a tank and its bank, the latter being claimed by the villagers to be their burial ground. Proceedings were started u/s 145, Criminal P. C., as there was a danger of a communal riot. There were also proceedings u/s 147, Criminal P. C.

2. The sole point of the reference that the last time anybody was proved to have been buried on the bank in question was more than three months before the date of the Magistrate's enquiry and therefore u/s 147(2), as the right had not been exercised within the statutory period laid down there, the order was bad. The answer is self evident and it is a little surprising that the learned Judge should have fallen into an error and made the reference. The logical result of his view is that the burial ground could only be kept going provided somebody was made to die at intervals of some three months. Clearly the answer is that this is not a right exercisable at all times of the year but are exercisable on certain occasions. The evidence was that on the last occasion somebody of the community died whose death was due to such a cause that custom required his

burial, he was buried in this place and I presume there was ample other evidence to show that the plot in question was otherwise used as a burial ground on such occasions. The learned Judge in fact omitted to read Sub-section (2) carefully and notice how its terms applied to the present case.

3. The reference is accordingly rejected.